



Storm Water Phase II Proposed Rule

Federal and State-Owned MS4s: Program Implementation

Storm Water Phase II Proposed Rule Fact Sheet Series

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This fact sheet is based on the Storm Water Phase II Proposed Rule. Therefore, the information provided herein is subject to change upon publication of the final Phase II rule in November 1999. A revised series of fact sheets will be provided at that time. A comprehensive list of the current fact sheets is in the text box at left.

The program for small municipal separate storm sewer systems (MS4s) under the Storm Water Phase II Proposed Rule would include, in addition to local government jurisdictions, certain Federal and State-owned and operated small MS4s. Federal facilities currently are not regulated as part of the existing NPDES storm water program for MS4s; however, the proposed rule would amend the definition of an MS4 to include the "United States" as an owner or operator of an MS4, thereby including Federal owners/operators in the NPDES Phase II storm water program. Federal and State-owned/operated small MS4s can include universities, prisons, hospitals, roads (i.e., departments of transportation), military bases (e.g., State Army National Guard barracks), parks, and office buildings/complexes. For more information on the proposed Phase II coverage of Federal and State MS4s, see Fact Sheet 2.1.

The proposed small MS4 program, largely designed with municipally-owned and operated small MS4s in mind, could raise implementation issues for Federal and State owners/operators. Federal and State owners/operators of regulated small MS4s would need to obtain an NPDES permit that would require the development and implementation of a storm water management program that includes the following six minimum control measures: public education and outreach, public participation/involvement, illicit discharge detection and elimination, construction site runoff control, post-construction runoff control, and good housekeeping/pollution prevention for municipal operations (for more information on each measure, see Fact Sheets 2.3 through 2.8). This fact sheet highlights potential implementation issues related to the minimum control measures, then discusses the implementation options included in the proposed rule that may resolve these issues.

What Are Some Implementation Concerns?

This section profiles the three most common implementation issues raised in the public comments submitted regarding the Phase II Proposed Rule.

How Does the Proposed Rule Account for Unique Characteristics?

Federal and State small MS4s possess a number of characteristics that set them apart from their municipal counterparts. For example, whereas municipally-owned MS4s largely serve resident populations, many Federal or State-owned MS4s, such as medical clinics and departments of transportation (DOTs), do not. Other types of Federal and State MS4s, such as military bases, prisons, and State universities, serve a population that is different from a typical municipal population. Their unique characteristics could lead Federal or State owners/operators to question either the need to implement the entire suite of minimum control measures or their ability to fully comply with their Phase II storm water permit. It would be the responsibility of the Federal or State-owned MS4 to develop a program to address the minimum measures in a way that best matches the MS4's unique characteristics.

What If the Owner/Operator Appears to Be Lacking the Necessary Legal Authority?

Three of the minimum control measures (illicit discharge detection and elimination, and the two construction-related measures) would require enforceable controls on third party activities to help ensure successful implementation of the measure. Some Federal and State owners/operators, however, may not have the necessary legal regulatory authority to adopt these enforceable controls in the same manner as do local governments. For example, a State DOT that is responsible for the portions of its roads running through urbanized areas may not have the legal authority to impose restrictions on, and penalties against, illicit (i.e., non-storm water) discharges into its MS4 if the source of the discharge is outside the DOT's right-of-way or jurisdiction. As in the case of local governments that may lack such authority, State and Federal MS4s would be expected to utilize the authority they do possess and to seek cooperative arrangements where they lack necessary authority.

How Would the Program Be Implemented Among with Multiple Regulated Jurisdictions?

Since the proposed rule provides automatic coverage of all small MS4s within an urbanized area, regardless of political boundaries, the result will likely be coverage of multiple governments and agencies with multiple jurisdictions in a single area. For example, a city government located within an urbanized area that owns or operates a small MS4 would be designated alongside the county, State, and Federal DOTs if they all own or operate a portion of the roads in the city. All four entities would be responsible for developing a storm water management program for their MS4s (or portions thereof) within the city limits. EPA would encourage State and Federal small MS4s to establish cooperative agreements with cities and counties in implementing their storm water programs.

What Are the Implementation Strategies that Would Help Address the Issues?

This section offers two hypothetical strategies for resolving the implementation issues raised above. The best solution may include a creative combination of strategies.

STRATEGY #1

A Focus on Choosing Appropriate BMPs

The proposed rule would require the permittee to choose *appropriate* best management practices (BMPs) for each minimum control measure. In other words, EPA would expect Phase II permittees to tailor their storm water management plans and their BMPs to fit the particular characteristics and needs of the permittee and the area served by their MS4. Therefore, the Federal or State owner/operator of a regulated storm sewer system could take advantage of the flexibility provided in the proposed rule by applying each minimum control measure in a way that best fits their MS4. Below is an example of tailored activities and

BMPs that Federal or State owners/operators could identify and implement for each measure:

- ❑ **Public Education and Outreach.** Distribute brochures and post fliers to educate employees of a Federal hospital about the problems associated with storm water runoff and the steps they can take to reduce pollutants in storm water discharges. For example, employees could be advised against carelessly discarding trash on the ground or allowing their cars to leak oil/fluids in the parking lot.
- ❑ **Public Participation/Involvement.** Provide notice of storm water management plan development and hold meetings at which employees of a Federal office complex are encouraged to voice their ideas and opinions about the effort. Request volunteers to help develop the plan.
- ❑ **Illicit Discharge Detection and Elimination.** Develop a map of the storm sewer system on a military base. Perform visual dry weather monitoring of any outfalls to detect if any non-storm water is being discharged into the storm sewer from the base. If a dry weather flow is found, trace it back to the extent possible and stop the discharge. In the case of a Federal or State DOT, the DOT could develop and implement a program to detect and eliminate illicit discharges, but when a discharge is discovered and traced to the boundary of its system, they could then refer the discharge to the adjoining regulated MS4 for further action.
- ❑ **Construction Site Runoff Control.** Require the implementation of erosion and sediment controls, and control of other waste, for any construction concerning Federal or State DOT's roads. Review site plans for proper controls, perform periodic inspections, and establish penalties in the construction contract if controls are not implemented. If construction is done directly by the regulated DOT, it could be penalized by the NPDES permitting authority for non-compliance with its small MS4 permit if controls are not properly implemented.
- ❑ **Post-Construction Runoff Control.** Require the consideration and implementation of post-construction storm water controls for any new construction on the grounds of a prison. This can be required as part of a construction contract, instituted as internal policy, and considered during site plan review.
- ❑ **Pollution Prevention/Good Housekeeping for Municipal Operations.** Train maintenance staff at a State university to employ pollution prevention techniques whenever possible. For example, routinely pick up trash/litter from the university grounds, use less salt on the parking lots and access roads in the winter, perform any maintenance of university vehicles under shelter only, limit pesticide use to the minimum needed, add vegetative buffer strips in the parking lots to filter runoff, and keep dumpster lids closed.

STRATEGY #2

Working with Other Entities

There could be instances when the Federal or State permittee has limited capabilities to satisfy one or more of the minimum control measures. For example, as discussed above, the permittee could lack the proper legal authority to enforce controls (although it should try to obtain the necessary legal authority if at all possible).

In the case of limited capabilities, the permittee could work with neighboring owners/operators of regulated small MS4s, preferably on a watershed basis, to form a shared storm water management program in which each permittee is responsible for activities that are within individual legal authorities and abilities. The proposed rule would allow the permittee to rely on other entities, with their permission, to implement those minimum measures that the permittee is otherwise unable to implement. Three examples:

- ❑ A State DOT with limited regulatory legal authority could reference a local sewer district's illicit detection and elimination program in its permit application, but only to the extent that the program sufficiently addresses the measure with respect to discharges into the DOT's storm sewer system.
- ❑ The permittee or NPDES permitting authority could reference such programs as coastal nonpoint pollution control programs, State or local watershed programs, State or local construction programs, and environmental education efforts by public or private entities.
- ❑ The permittee also could become a co-permittee with a neighboring Phase I MS4 through a modification of the Phase I MS4's individual permit. This may be the most logical and preferable option for those Federal and State entities located in Phase I municipal areas.

Choosing to work with other governmental entities as a co-permittee, or referencing parts of each other's plans, could help to resolve issues that may arise due to multiple regulated jurisdictions in the same area. If multiple jurisdictions work together, they could avoid duplicative efforts, as well as territorial or regulatory disputes. See Fact Sheet 2.9 for more information on permitting options for regulated small MS4s.

Suggested Steps to Working with Other Entities

- (1) Identify the boundaries of the urbanized area (see Fact Sheet 2.2 for more information on urbanized areas)
 - (2) Identify the owners and operators of the storm sewer systems or portions of the systems within the urbanized area such as local, State, Tribal or Federal governments or other entities.
 - (3) In seeking permit coverage, choose to:
 - (A) Identify where another entity may satisfy one or more minimum control measure. If its program is the equivalent to a minimum control measure's required elements, the owner/operator of the regulated small MS4 may reference the existing program if the other entity gives it permission to do so. While such an arrangement would relieve the owner/operator from performing the minimum measure itself, the owner/operator would remain ultimately responsible for the measure's effective implementation (see Fact Sheet 2.9 for more information on this option)
- OR
- (B) Team with an owner or operator of a Phase I MS4 and become a co-permittee on its existing Phase I individual permit (see Fact Sheet 2.9 for more information on this option)

For Additional Information

Contact

- ☞ U.S. EPA Office of Wastewater Management
 - Phone : 202 260-5816
 - E-mail: SW2@epa.gov
 - Internet: www.epa.gov/owm/sw2.htm

Reference Documents

- ☞ Storm Water Phase II Proposed Rule Fact Sheet Series.
 - Contact the U.S. EPA Water Resource Center at 202 260-7786 or at waterpubs@epa.gov
 - Internet: www.epa.gov/owm/sw2.htm
- ☞ Storm Water Phase II Proposed Rule, published on Jan. 9, 1998 in the *Federal Register* (63 FR 1536).
 - Internet: www.epa.gov/owm/sw2.htm